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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/817,977	03/27/2001	Thomas Richter	DE000052	9868

24737 7590 06/23/2004

PHILIPS INTELLECTUAL PROPERTY & STANDARDS
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BRIARCLIFF MANOR, NY 10510

EXAMINER

LELE, TANMAY S

ART UNIT	PAPER NUMBER
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2684

DATE MAILED: 06/23/2004

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/817,977

Applicant(s)

RICHTER, THOMAS *chr*

Examiner

Tanmay S Lele

Art Unit

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 June 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-6

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Tanmay Lele
tele: 703-305-3462

DETAILED ACTION

1. Applicant's arguments filed 04 June 2004 have been fully considered but they are not persuasive.
2. In response to applicant's argument that "no such evaluation means with the structure recited in claim 1 of the present invention is disclosed or suggested in Kline..."), a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

In regards to claims 1 and 3, Applicant attempts to overcome the rejection by stating, "no such evaluation means with the structure recited in claim 1 of the present invention is disclosed or suggested in Kline..." Note that it is respectfully believed that, as stated in the previous Office Action (paper number 7, page 5), Kline does teach or recite of evaluation means as there is, subsequent to FM demodulation, processing of information that alternates between two states, the synchronization state followed by the data extraction stated (column 11, lines 45 –50). Hence, as because the Examiner is required to interpret the claims in the broadest reasonable manner under current examining practice, the Examiner is not persuaded by the Applicant's arguments suggesting that the references do not teach or recite the claimed as broadly interpreted.

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3. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Regarding claims 1 and 6, Applicant further attempts to overcome the rejection by stating, "If, however, Sriram were to be applied to the further synchronizations in the standard AMPS processing of Kline, such would occur only after recognition of a starting synchronization, because, as stated above and as stated in the prior reply, because recognizing a starting synchronization is conventionally a prerequisite for further processing of the received data stream." Examiner respectfully disagrees that the "purported embodiment" would fail to disclose, suggest, or feature the claimed as presented. Note that, in addition to the comments presented in previous Office Action, paper number 7, pages 3 – 4, both systems teach (in broad terms) of the concept of detecting a synchronization and then recovery of data (for example: Kline column 11, lines 45 – 50 and Sriram: column 2, lines 38 –40) and thus Examiner does not argue that "recognizing a starting synchronization is conventionally a prerequisite for further processing of the received data stream," as stated by Applicant.

Continuing, Applicant attempts to overcome the rejection by stating, "The notion that Sriram suggests modification of Kline to somehow feature the alternative scheme recited in claim 1 of the present invention amounts to no less than the applicant of impermissible

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hindsighting by an Examiner who read the disclosure of the instant application.” Again Examiner disagrees with Applicant’s assertions that improper hindsighting were used. Note that, as stated in the previous Office Action (paper 7, pages 4 and 6) surer detection of signals (and thus synchronization) are integral to wireless communications, as noted in Sriram’s “Background.” The benefits described in this section of Sriram (increased accuracy of detection, decreased receiver lock time, ect) are all facets included in concept of surer detection of signals. Further note that both systems commonly deal with digital bit sequence recognition and data extrapolation and thus it is respectfully believed the arts related in topic. Hence, Examiner is not persuaded by Applicant’s arguments that improper hindsighting was used in cite combination.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tanmay S Lele whose telephone number is (703) 305-3462. The examiner can normally be reached on 9 - 6:30 PM Monday – Thursdays and on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Nay A. Maung can be reached on (703) 308-7745. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-0377.

✓
Tanmay S Lele
Examiner
Art Unit 2684


NAY MAUNG
SUPERVISORY PATENT EXAMINER

tsl
June 21, 2004